

REMARKS

This Response is filed in response to the Office Action dated March 18, 2009.

Upon entry of this Response, claims 1-5, 7, 9 and 10-26 will be pending in the Application, claims 10 and 11 having been withdrawn.

In the outstanding Office Action, the Examiner rejected claim 12 under § 35 U.S.C. 112, second paragraph, as being indefinite; rejected claims 1, 7, 9, 12-14, 16-18 and 20-26 under 35 U.S.C. 103(a), as being unpatentable over Sue (U.S. Patent No. 7,310,344), hereinafter "Sue"; rejected claim 2 under 35 U.S.C. §103(a), as being unpatentable over Sue and further in view of Official Notice; rejected claims 3-5 under 35 U.S.C. §103(a), as being unpatentable over Sue in view of Official Notice and further in view of Matte (U.S. Patent Application Publication No. 2003/0233429), hereinafter "Matte"; rejected claim 15 under 35 U.S.C. §103(a), as being unpatentable over Sue and further in view of Official Notice; objected to claims 13 and 20 as improper dependent claims, for failing to further limit the subject matter of a previous claim; and objected to claim 19 as dependent upon a rejected base claim, but indicated that claim 19 would be allowable if rewritten in independent form.

Rejection under 35 U.S.C. 112

The Examiner rejected claim 12 under §35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. Applicant has amended claim 12 in a manner believed to overcome the Examiner's rejection. Therefore, in view of the above, Applicant submits that claim 12 is not indefinite and complies with the provisions of 35 U.S.C. 112, second paragraph, and therefore is allowable.

Rejection under 35 U.S.C. 103(a)

CLAIMS 1, 7, 9, 12-14, 16-18 AND 20-26

The Examiner rejected claims 1, 7, 9, 12-14, 16-18 and 20-26 under 35 U.S.C. §103(a), as being unpatentable over Sue. Specifically, the Examiner stated that:

Claim 1 recites a method of remotely monitoring building equipment comprising providing at least one item of building HVAC equipment communicably linked to a router, the router being communicably linked to an instant messaging server; providing at least one remotely located interface, the at least one remotely located interface being communicably linked to the instant messaging server; gathering data from the at least one item of building HVAC equipment with the router; packetizing the gathered building equipment data into at least one data packet; encapsulating the at least one data packet into an instant message; and transmitting the encapsulated at least one data packet in the instant message from the router to the at least one remotely located interface through the instant messaging server.

These features are all anticipated, or rendered inherent to Sue which discloses a system that allows a cell phone or PALM user the ability to remotely monitor and control devices belonging to a home automation system through utilization of an instant messaging server (e.g. See Figure 1 and C3 L60-62).

Although not specifically mentioned, utilizing the process of encapsulation and un-encapsulation is a process believed to be obvious to the actual implementation of Sue since this represents a notoriously well known feature associated with Internet based communications. See Wikipedia's definition of "Encapsulation" for support of this assertion.

As per claim 7, converting data is inherent to Sue.

As per claim 9, since encapsulation is believed to be obvious to the implementation of Sue, it logically follows that the encapsulated data would be unencapsulated upon its delivery to the remotely located interface. This process appears to be anticipated by data being retrieved from an IP packet which is sent to the remote interface. Since Sue teaches IP based packets being transmitted to and from building equipment, via the utilization of an instant messaging server, it seems obvious that the data in the packets would need to be retrieved in order for Sue to function with any effectiveness whatsoever.

As per claims 12-13, Sue teaches gathering data from the HVAC equipment to be comprised of at least one of data representative of an alarm, a fault, operational status, a mode, a setting, operational parameters or historical parameters (e.g. See Figure 3 elements 304 and 305).

As per claim 14, Sue adequately discloses the process of setting a thermostat, per se (e.g. See C2 L 12-21 and C3 L 15-33).

As per claim 16, clearly Sue teaches utilizing an instant messaging server and a router to convey messages to and from a user located remotely from appliances of a home (e.g. See Figure 1 and C3 L60-62).

As per claim 17, the rejection of claim 1 is applied herein.

As per claims 18 and 20, the rejection of claims 1, 7 and 12-13 are applied herein.

As per claim 21, the rejection of claim 12 is applied herein.

As per claim 22, the rejection of claim 14 is applied herein.

As per claim 23, the rejection of claim 15 is applied herein.

As per claim 24, the rejection of claim 1 is applied herein.

As per claims 25 and 26, the rejection of claim is applied herein.

Applicant respectfully traverses the rejection of claims 1, 7, 9, 12-14, 16-18 and 20-26 under 35 U.S.C. 103(a). First, hindsight interpretation of a reference is improper. Relying upon that which was not "within the level of ordinary skill in the art at the time the claimed invention was made" is hindsight (see MPEP 2141.01(III), 2145(X)(A)). Reliance upon Wikipedia is clearly hindsight and otherwise improper because Wikipedia is a constantly changing resource that does not describe the state of the art at the time of filing. Use of Wikipedia, thus, results in the Examiner relying upon knowledge that was not "within the level of ordinary skill in the art at the time the claimed invention was made." In addition, use of Wikipedia is otherwise improper to support the Examiner's assertion. Wikipedia expressly indicates that "[i]n the context of patent law, using the Internet as a source of prior art when assessing whether an invention is novel and inventive, is problematic since it is often difficult to ascertain precisely when information on websites became available to the public." Wikipedia article entitled Prior Art ([http://en.wikipedia.org/wiki/Prior_art_\(patent\)](http://en.wikipedia.org/wiki/Prior_art_(patent))). Wikipedia's fluid and user-developed content

further exacerbates this problem. Furthermore, Wikipedia does not discuss encapsulating a data packet in an instant message. Thus, reliance upon Wikipedia is improper.

Second, Sue does not disclose all of the limitations of independent claims 1 and 18. For example, Sue does not disclose "gathering data from the at least one item of building HVAC equipment" and "transmitting the encapsulated at least one data packet in the instant message from the router to the at least one remotely located interface through the instant messaging server." Instead, Sue transmits "event notifications and other types of messages" from a system device, to a home automation system, to a home router, to a network, and then to computer. (see Sue, col. 5, lines 55-61).

Third, it is impermissible to modify a reference by changing a principle operation of the reference (see MPEP 2143.01). A principle operation of the Sue includes the "easy to use and understand interface" for sending "messages" (see Sue, col. 5, lines 55-61, col. 6, lines 1-10). Transmitting encapsulated data as is recited in independent claim 1 and computer instructions for gathering data, packetizing data, and encapsulating data as recited in independent claim 18 would be contrary to the principle operation of Sue, which is to provide an easy to use and understand interface for sending messages, because such operation would complicate the communication and system. Furthermore, the simplistic nature of Sue is not capable of allowing users of computerized interfaces based on different operating systems and IM programs (for example, Jabber) to communicate through IM across multiple servers. Thus, independent claims 1 and 18 are not obvious in view of Sue.

Dependent claims 7, 9, 12-14, 16-17, and 20-26 are believed to be allowable as depending from what are believed to be allowable independent claims 1 and 18 for the reasons given above. In addition, claims 7, 9, 12-14, 16-17, and 20-26 recite further limitations that distinguish over the applied art. In conclusion, it is respectfully submitted that claims 1, 7, 9, 12-14, 16-18, and 20-26 are not anticipated nor rendered obvious by Sue and are therefore allowable.

CLAIM 2

The Examiner rejected claim 2 under 35 U.S.C. § 103(a), as being unpatentable over Sue and further in view of Official Notice. Specifically, the Examiner stated:

Claim 2 introduces a feature wherein the router may be identified by the instant message. A router is notoriously well known to have identification data associated with it so that messages on a network will be directed to the proper destination (in this case a router connected to an overall HVAC system) in a timely and efficient manner. Also, it is also notoriously well known to include destination identification data into a communications packet itself, especially an IP packet of data. Therefore, one way or the other, this feature is at the very least obvious to the implementation of Sue et al. and represents a feature notoriously well known in the overall art of network traffic management.

That being said, Official Notice is taken with respect to the features just mentioned, as their incorporation would be obvious to one of ordinary skill in the art at the time the invention was made for the purpose of making sure data packets arrive at their proper destination.

Applicant respectfully traverses the rejection of claim 2 under 35 U.S.C. §103(a). First, dependent claim 2 is believed to be allowable as depending from what is believed to be allowable independent claim 1 for the reasons given above.

Second, Applicant asks the Examiner, in reconsidering the rejection of claim 2, to bear in mind that "[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known" and that if the Applicant traverses the "examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained." See MPEP 2144.03. The Examiner has not supported the Official Notice with documentary evidence and the limitation at issue is not "capable of instant and unquestionable demonstration as being well-known." In sum, the requirements of MPEP 2144.03 have not been satisfied. Applicant, therefore, traverses the Official Notice taken with respect to the claim limitation at issue. Additionally, Applicant respectfully requests the Examiner produce a reference that adequately supports the noticed facts or allow claims 2.

CLAIMS 3-5

The Examiner rejected claims 3-5 under 35 U.S.C. §103(a), as being unpatentable over Sue in view of Official Notice and further in view of Matte. Specifically, the Examiner stated:

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sue combined system (Sue in view of Official Notice), as applied to claim 2 above, and further in view of Matte, U.S. Patent Application Publication No. 2003/0233429. Claims 3-5 are obvious to an application running on a portable remotely located computer, wherein the application allows a person to type in their private password, so as to allow a remotely located home automation system to recognize as to whether the person is allowed access to the system, and granting access if it is determined that the person is allowed to access the home automation system. These particular steps are not explicitly taught by Sue.

These features are taught by Matte et al (e.g. See [0025]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sue's combined system with Matte et al. since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. It would have been obvious to include the features of Matte et al into Sue's combined system for the purpose of ensuring the security of the overall system.

Applicant respectfully traverses the rejection of claims 3-5 under 35 U.S.C. §103(a). First, dependent claims 3-5 are believed to be allowable as depending from what is believed to be allowable independent claim 1 for the reasons given above. Matte does not disclose the limitations not disclosed by Sue. Furthermore, claims 3-5 recite additional limitations distinguishable from Sue and Matte. Thus, Applicant request the Examiner allow claims 3-5.

CLAIM 15

The Examiner rejected claim 15 under 35 U.S.C. §103(a), as being unpatentable over Sue and further in view of Official Notice. Specifically, the Examiner stated:

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sue, as applied to claim 1 above, and further in view of Official Notice. As per claim 15, Sue does not explicitly teach polling building equipment at selected time intervals.

Official Notice is taken with respect to this feature. It would be obvious to include this feature so that the status of the equipment is known at more than one instant in time, thereby forming a more reliable system.

Applicant respectfully traverses the rejection of claim 15 under 35 U.S.C. §103(a). First, dependent claim 15 is believed to be allowable as depending from what is believed to be allowable independent claim 1 for the reasons given above.

Second, Applicant asks the Examiner, in reconsidering the rejection of claim 15, to bear in mind that "[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known" and that if the Applicant traverses the "examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained." See MPEP 2144.03. The Examiner has not supported the Official Notice with documentary evidence and the limitation at issue is not "capable of instant and unquestionable demonstration as being well-known." In sum, the requirements of MPEP 2144.03 have not been satisfied. Applicant, therefore, traverses the Official Notice taken with respect to the claim limitation at issue. Additionally, Applicant respectfully requests the Examiner produce a reference that adequately supports the noticed facts or allow claims 15.

Objection of Claims 13 and 20

The Examiner objected to claims 13 and 20 as improper dependent claims for failing to further limit the subject matter of a previous claim. Specifically, the Examiner stated that each of "[c]laim [12 or 18] recites HVAC equipment, and then [claim 13 or claim 20] recites that the HVAC equipment is heating, ventilation or air conditioning equipment." In response, Applicant has amended claims 13 and 20 in a manner believed to overcome the objection. Thus, Applicant requests the Examiner withdraw the objection to claims 13 and 20.

Allowable Subject Matter

The Examiner objected to claim 19 as being dependent upon a rejected base claim but indicated that claim 19 would be allowable if rewritten in independent form. Applicant

appreciates the Examiner's indication of allowable subject matter but believes that all of the claims are allowable for the reasons provided above.

CONCLUSION

In view of the above, Applicant respectfully requests reconsideration of the Application and withdrawal of the outstanding objections and rejections. As a result of the amendments and remarks presented herein, Applicant respectfully submits that claims 1-5, 7, and 9-26 are not anticipated by nor rendered obvious by Sue, Official Notice, and/or Matte and thus, are in condition for allowance. As the claims are not anticipated by nor rendered obvious in view of the applied art, Applicant requests allowance of claims 1-5, 7, and 9-26 in a timely manner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
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